

SENATE BILL 1942

By Bowling

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 13, relative to unlawful photography.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-605, is amended by deleting the section and substituting the following:

(a) It is an offense for a person to knowingly photograph, or cause to be photographed, an individual when the individual has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or legal guardian, if the photograph:

(1)

(A)

(i) Would offend or embarrass an ordinary person if the person appeared in the photograph; or

(ii) Is focused on the intimate area of the individual and would be considered offensive or embarrassing by the individual;
and

(B) Was taken for the purpose of sexual arousal or gratification of the defendant; or

(2)

(A) Includes the unclothed intimate area of the individual and would be considered offensive or embarrassing by the individual;

(B) Was taken for the purpose of offending, intimidating, embarrassing, ridiculing, or harassing the victim; and

(C) Was disseminated by the defendant, the defendant threatened to disseminate the photograph, or the defendant permitted the dissemination of the photograph, to another person.

(b) As used in this section:

(1) "Intimate area" means the genitals, pubic area, anus, buttocks, or female breast of a person;

(2) "Photograph" means a photograph or photographic reproduction, whether taken using digital media or conventional film, still or moving, or a videotape, live television transmission, or social media broadcast of an individual; and

(3) An individual has a reasonable expectation of privacy, regardless of the location where a photograph is taken, if:

(A) The photograph was taken in a manner that would offend or embarrass a reasonable person; and

(B) The photograph depicts areas of the individual's body, clothed or unclothed, that would not be visible to ordinary observation but for the offensive or embarrassing manner of photography.

(c) A photograph taken in violation of this section must be confiscated and, after the use of the photograph as evidence, destroyed.

(d)

(1) A violation of subdivision (a)(1) is a Class A misdemeanor.

(2) A first violation of subdivision (a)(2) is a Class B misdemeanor. A second or subsequent violation of subdivision (a)(2) is a Class A misdemeanor.

(3) A violation of subdivision (a)(1) is a Class E felony if:

(A) The defendant disseminates or permits the dissemination of the photograph to another person; or

(B) The victim of the offense is under thirteen (13) years of age at the time of the offense.

(4) A violation of subdivision (a)(1) is a Class D felony if:

(A) The defendant disseminates or permits the dissemination of the photograph to another person; and

(B) The victim of the offense is under thirteen (13) years of age at the time of the offense.

(e) This section does not preclude the state from electing to prosecute conduct in violation of this section under another applicable section, including chapter 17, parts 9 and 10 of this title.

(f) In addition to the punishment provided for a person who commits the misdemeanor unlawful photographing in violation of privacy pursuant to subdivision (a)(1), the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to the Tennessee Sexual Offender and Violent Sexual Offender Registration, Verification and Tracking Act of 2004, compiled in title 40, chapter 39, part 2.

SECTION 2. This act takes effect July 1, 2022, the public welfare requiring it, and applies to offenses committed on or after that date.